service of this State or of the United States, during the term for which he shall be engaged in such service," &c., and suspending the running of the Statutes of Limitation in such cases. The Supreme Court of that State, in Breitenbach *vs.* Bush (8 Wright, not yet published,) affirmed the constitutionality of the latter act, Justice WOODWARD, in delivering the opinion of the Court, taking the ground that the exemption was an interference with the remedy only, which could not extend beyond three years, that being the term of enlistment of the appellant in the case, and saying that the Court "cannot pronounce it unreasonable."

In Coxe *vs.* Martin, (8 Wright, not yet published,) the same Court decided that a scire facias upon a mortgage was within the prohibition of the act.

Where, however, the parties to a contract expressly include in it the legal remedy by which it is to be enforced, the Legislature cannot pass any law to change the remedial process agreed upon. The defendant having expressly waived *all* stay of execution, an act giving a stay in all such cases was held unconstitutional as to such contract. Billmeyer *vs.* Evans, 4 Wright (Penna.) 324.

J. F. D.

Supreme Court of Pennsylvania.

SMITH ET AL. *vs.* LATHROP ET AL.

Except in matters ruled by the clause of the Federal Constitution declaring that "full faith and credit" shall be given in each State to judicial proceedings in every other State, the Courts of the several States are foreign Courts as to each other.

Therefore the plea of *lis pendens* in another State is no defence to a suit at the same time and for the same cause of action in Pennsylvania.

Opinion of the Court by

READ, J.—The question in this case arises upon an affidavit of defence, alleging the pendency of a prior action by the same plaintiff against the same defendants for the same cause of action in the city of New York, in the State of New York, and which is still undetermined. It is proper that such a question should be definitively settled.

In England it may be pleaded that there is another action depending for the same trespass, or other cause of action in the same or any other Superior Court at Westminster. But it was decided by the Privy Council in 1792, in *Bayley* vs. *Edwards*, 3 Swanston

703, by Lord CAMDEN, and the Master of the Rolls, Sir RICHARD PEPPER ARDEN, afterwards Lord ALVANLEY, that a suit pending in England is not a good plea to the jurisdiction to a subsequent suit in Jamaica for the same cause of action. Lord CAMDEN said: "The plaintiffs in England attempt to set up the suit here in bar of the jurisdiction of Jamaica, but the causes for allowing the plea of double suits, are all where the suits are in Courts here, while this is of a second suit in a Court which is a foreign Court, inasmuch as this country has no process to enforce its decrees in the Islands." "As to the inconvenience, considering the difficulties of administering justice between parties occasionally living under the separate jurisdictions, I think the parties ought to be amenable to any Court possible, where they are travelling from country to country, and we must then endeavor to correct the mischief of these double suits, as much as we can, by allowing in each country the benefit of all the other proceedings in the other part of the King's dominions."

In *Cox* vs. *Mitchell*, 7 Com. Bench N. S. 55, it was held that proceedings pending between the same parties for the same cause of action in one of the Superior Courts of the United States, was no ground for staying proceedings in an action in England. ERLE, C. J., said: "No authority has been cited to support it, although there may be some hardship in having proceedings pending in two countries at the same time. I think we are bound so to enforce the laws as to enable the plaintiff to obtain satisfaction of his debt. There would be great danger in interfering to prevent a man from being sued in this country when he may have left his own for the very purpose of avoiding the consequences of a suit against him there." WILLIAMS, J., said: "The question is, whether the fact of the plaintiff having another action pending against the defendant in a foreign Court, is a bar of his remedy in the Courts of this country. I am not aware of any principle upon which such an argument could rest; and in the absence of any authority we cannot interfere."

This case was recognised, to its fullest extent, by the Court of Exchequer, on the 28th May last (1862), in *Scott* vs. *Lord Seymour*,

the decision in which has been since affirmed in the Exchequer Chamber. In this case the Court held that an action for an assault and battery, committed at Naples, could be sustained in England, notwithstanding the pendency of civil proceedings for the same wrong in the Neapolitan Court. The Court said (31 L. J. Exch. 461) "Then it comes to this: that this is a wrong for which an action would lie here, and for which (as it is not negatived) we must assume an action will lie at Naples, but in respect of which proceedings are pending at Naples, at the plaintiff's instance. This, however, is no defence. It cannot be a defence in bar of the action. It would be no answer even in abatement of the writ, that an action was pending here in an inferior Court, and how in law or reason can it be an answer that it is pending in a foreign Court, when the action is in no sense local. The case of *Cox* vs. *Mitchell*, is an authority to show that an action pending abroad, for a wrong, is no ground for staying proceedings in an action here."

Now it is clear that foreign judgments are those which are obtained in foreign Courts, and in this category the English Courts have included the Courts of Scotland: *Cowan* vs. *Braidwood*, 1 Man. & Gr. 882; *Russell* vs. *Smith*, 9 Mees. & W. 810; the Irish Courts, *Sheehy* vs. *Life Ass. Co.*, 3 Com. B. N. S. Exch. Ch. 597; the Colonial Courts of Jamaica, 3 Swanst. 703; of Newfoundland, *Henley* vs. *Soper*, 8 Barn. & Cr. 16; of the Canadas, 5 H. Lords Cases 431, and of New South Wales, *Bank of Australasia* vs. *Nias*, 16 Ad. & Ellis, N. S. 717, in which last case Lord CAMPBELL says: "It has often been said, and by judges and judicial writers of great eminence, that the judgment of a Colonial Court of the British Empire comes within the category of a foreign judgment" notwithstanding an appeal lies from them to the Queen in council.

There are not less than fifty of these colonial dependencies, all of whose Courts, in the sense used by Lords CAMDEN and CAMPBELL, are foreign, and are so treated by the Courts at Westminster. The same doctrine, in effect, was enunciated by Judge WASHINGTON, in *Buckner* vs. *Finley*, 2 Peters 586. It was there decided that bills of exchange drawn in one State of the Union, on persons living in another State, are to be treated as foreign bills, just

as bills drawn in England, and payable in Scotland or Ireland, or *vice versa*, were foreign bills (*Mahoney* vs. *Ashlen*, 2 Barn. & Ad. 478, 22 E. C. L. R.), and so continued until the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), by which bills drawn in one part and payable in any other part of the British Islands, are now inland bills, and for similar reasons to those growing out of the difference of the laws and institutions of Scotland, England and Ireland, although forming one United Kingdom, it is said by Judge WASHINGTON, p. 590: "For all national purposes embraced by the Federal Constitution, the States and citizens thereof, are one, united under the same sovereign authority, and governed by the same laws. In all other respects the States are necessarily foreign and independent of each other." They are each governed by their own laws, and their Courts having no extra-territorial power to enforce their decrees beyond their jurisdictional limits, they are, in that sense, foreign to each other, which is the clear and settled doctrine of the Common Law.

Then let us examine how this question stands upon authority in the United States; and first as to New York, the pendency of a suit in which is set up as a defence to this suit. The mere pendency of a suit in a foreign Court, or Court of the United States, or in the Court of a sister State, by an uniform course of decision in New York, cannot be pleaded in abatement or in bar to a proceeding in the Courts of that State: *Boune* vs. *Joy*, 9 Johns. 221; *Walsh* vs. *Durkin*, 12 Id. 99; *Mitchell* vs. *Bunch*, 2 Paige 606; *Cook* vs. *Litchfield*, 5 Sand. Sup. Court 342; *Williams* vs. *Ayraul*, 31 Barbour 364. Such also is the rule in Kentucky, *Salmon* vs. *Wootten*, 9 Dana 422, in which case it is said that *Hart* vs. *Granger*, 1 Connecticut 154, is not sustained by authority, which is also the present opinion in Connecticut. In *McIlton* vs. *Love*, 13 Illinois 494, and *Goodale* vs. *Marshall*, 11 New Hampshire 99, the same doctrine is asserted. In *White* vs. *Whitman*, 1 Curtis 494, Judge CURTIS says, after speaking of the New York cases in 9 and 12 Johnson: "These cases seem to me to have been correctly decided. Though the Constitution and Laws of the United States require that the judgments, rendered in one State, shall receive full

faith and credit in another; yet, in respect to all proceedings prior to judgment, the Courts of the different States, acting under different sovereignties, must be considered as so far foreign to each other, that a remedy sought by judicial proceedings under one cannot be treated as a mere and simple repetition of a remedy sought under another. There may be real advantages to be gained, in respect of the property on which an execution may be levied, or otherwise, by resorting to an action in another State, and the same considerations are applicable to a second suit in a Circuit Court of the United States while one is pending in a State Court;" and the same opinion is expressed by the same Judge in *Lyman* vs. *Brown*, 2 Curtis 559.

The most ample and learned discussion of the question is to be found in *Hatch* vs. *Spafford*, 22 Connecticut 485, where all the cases are reviewed, and the Court unanimously arrived at the same conclusion. Opposed to these decisions is the case of *Earl* vs. *Raymond*, 4 McLean 233. So far therefore upon reason and authority, the rule seems to be settled, and the only remaining question is, whether there is any authoritative decision of our own Courts, leading to a contrary result.

In *Toland* vs. *Tichenor*, 3 Rawle 320, it turned upon the form of the plea, which was held to be bad. In *Lowry* vs. *Hall*, 2 W. & S. 133, C. J. GIBSON said: "The pendency of a prior suit, in a foreign country, cannot be pleaded in abatement of a suit for the same cause here; and it has been held that the States of the American Union stand in the relation of a foreign State as regards this particular matter." In *Irvine* vs. *Lumbermen's Bank*, Id. 208, Justice ROGERS makes a quære upon the principle of comity, which is clearly not applicable to New York; and in *Ralph* vs. *Brown*, 3 W. & S. 399, C. J. GIBSON says: "Yet the substance of the plea was palpably bad; not, perhaps, because the pendency of an action, in another State, may not be pleaded in abatement of a subsequent action for the same cause here, but for the reason that the bill in equity, pleaded here, was not in fact for the same cause." As none of these contradictory and uncertain dicta were necessary for the decision in these cases, we are left untrammelled by authority,

to decide the case before us on what we consider the settled law of the country, that the plea of *lis pendens* in another State, is no defence to this action.

Judgment affirmed.

Circuit Court of the United States for the District of Wisconsin.

EPHRAIM BUTTRICK *vs.* JOHN S. HARRIS AND ALBERT B. HARRIS.

Where a contract is simply for a loan of money, and the capital is to be returned at all events, any profit made or loss imposed upon the borrower in addition to the legal rate of interest, is usury, no matter what form or disguise it may assume.

Where, however, an addition is made for the price of exchange, not for the loan or forbearance, but as compensation for accepting payment in a place less convenient, or where money is less valuable, the contract will be lawful.

Therefore, a promissory note made and payable in the city of Milwaukie, with interest at the rate of twelve *per cent.*, and exchange, on Boston, not exceeding *one per cent.*, is on its face usurious under the laws of Wisconsin; and the mere fact of the residence of the payee being in the State of Massachusetts, near Boston, is not evidence that the exchange was added for the accommodation of the maker.

Opinion of the Court by

MILLER, District Judge.—The note in suit was given by defendants to the plaintiff, in the city of Milwaukie, by which they promised to pay to the order of the plaintiff, two years after date, at the Marine Bank, in said city, three thousand dollars, with interest at the rate of twelve *per cent. per annum*, said interest payable semi-annually, with exchange on Boston on said principal and interest, not exceeding *one per cent.*

It appeared in evidence that the plaintiff resided in the State of Massachusetts, near Boston. That he had money loaned out in Milwaukie, which on being collected by his agents was borrowed by the defendant, John S. Harris, and for which the note in suit was given. There was no express proof that the note was made payable in Milwaukie with exchange, on Boston, corruptly, or for usurious interest, or for the accommodation of the borrower, at his request.